

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER,

Plaintiff,

vs.

UNITED HEALTH,

Defendant.

**8:23CV220**

**MEMORANDUM AND ORDER**

This matter is before the Court on what the Court construes as Plaintiff's Notice of Appeal, [Filing No. 11 at 2](#),<sup>1</sup> and a memorandum from the Clerk of the Court requesting a ruling as to Plaintiff's authorization to proceed in forma pauperis on appeal, [Filing No. 12](#). For the reasons set forth below, the Court finds that pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), Plaintiff may not take this appeal in forma pauperis.

A litigant seeking to appeal a judgment must either pay the required filing fees, see [Fed. R. App. P. 3\(e\)](#), or proceed in forma pauperis pursuant to [§ 1915\(a\)](#). [Section 1915\(a\)\(3\)](#) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." An appellant demonstrates good faith by seeking appellate review of any issue that is not frivolous. [Coppedge v. United States](#), 369 U.S. 438, 445 (1962); [Ellis v. United States](#), 356 U.S. 674, 674 (1958).

An appeal is frivolous when none of the legal points are arguable on their merit. See [Neitzke v. Williams](#), 490 U.S. 319, 325 (1989); [Misischia v. St. John's Mercy Health Sys.](#), 457 F.3d 800, 806 (8th Cir. 2006). And while such a finding should be made only

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<sup>1</sup> Plaintiff's Notice of Appeal contains an appeal for the present case, as well as Plaintiff's other pending case, 4:23CV3099. See [Filing No. 11 at 1.](#); see also [Filing No. 9](#), Case No. 4:23CV3099.

in extreme cases, it is proper when a party attempts to appeal from an order that is clearly not appealable. See *Cohen v. Curtis Publ'g Co.*, 333 F.2d 974, 978 79 (8th Cir. 1964).

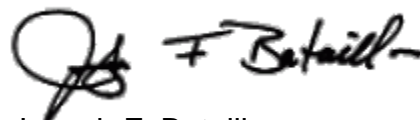
Here, Plaintiff seeks to “appeal all of stalling in [his] case,” [Filing No. 11 at 2](#), but he does not identify any specific order that he wishes to appeal. Assuming Plaintiff is attempting to appeal from the Court’s previous order entered on June 12, 2023, directing Plaintiff to update his address after mail sent to him was returned to the Court as undeliverable,<sup>2</sup> that order is clearly not appealable. The order does not qualify as a “final decision[]” capable of appeal under [28 U.S.C. § 1291](#). In addition, the order does not fall within the narrow class of appealable interlocutory orders under [28 U.S.C. § 1292\(a\)](#).

Because Plaintiff is attempting to appeal from an order that is not appealable, the Court certifies that the appeal is not taken in good faith.

IT IS THEREFORE ORDERED that Plaintiff may not proceed on appeal in forma pauperis.

Dated this 14th day of July, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon".

Joseph F. Bataillon  
Senior United States District Judge

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<sup>2</sup> The envelope in which Plaintiff’s Notice of Appeal was mailed contains the same address which the Court has on file so the Court assumes that is Plaintiff’s correct address.